

1 BILL NO. S-83-09-52

2 SPECIAL ORDINANCE NO. S212-83

3 AN ORDINANCE approving a Contract
4 by the City of Fort Wayne by and
5 through its Board of Public Works
6 and O'Rourke Construction, for Res.
#5974-83, Lafayette Street Overpass
Demolition.

7 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
8 OF THE CITY OF FORT WAYNE, INDIANA:

9 SECTION 1. The annexed Contract, made a part hereof,
10 by the City of Fort Wayne by and through its Board of Public
11 Works and O'Rourke Construction, for Res. #5974-83, Lafayette
12 Street Overpass Demolition, is hereby ratified, and affirmed
13 and approved in all respects. The work under said Contract re-
14 quires:

15 This contract is for improvement by
16 removal of the abandoned Penn-Central
17 Railway Company Railroad Bridges on
Lafayette Street between Brackenridge
and Murray Streets;

18 the Contract price is Eighty-Seven Thousand Seven Hundred and
19 No/100 Dollars (\$87,700.00).

20 SECTION 2. Prior Approval was received from Council
21 with respect to this Contract on September 20, 1983. Two (2)
22 copies of the Contract attached hereto are on file with the City
23 Clerk, and are available for public inspection.

24 SECTION 3. That this Ordinance shall be in full force
25 and effect from and after its passage and any and all necessary
26 approval by the Mayor.

27 Samuel J. Telarico
28 Councilmember

29 APPROVED AS TO FORM
30 AND LEGALITY

31 Bruce O. Boxberger, City Attorney
32

Read the first time in full and on motion by Talarico, seconded by Dir Datta, and duly adopted, read the second time by title and referred to the Committee Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATE: 9-27-83

Sandra E. Kennedy
CITY CLERK

Read the third time in full and on motion by Talarico, seconded by Dir Datta, and duly adopted, placed on its passage. PASSED ~~(LOST)~~ by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 10-11-83

Sandra E. Kennedy
- CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ZONING MAP)~~ ~~(GENERAL)~~ ~~(ANNEXATION)~~ ~~(SPECIAL)~~ ~~(APPROPRIATION)~~ ORDINANCE ~~(RESOLUTION)~~ NO. I-212-83 on the 11th day of October, 1983.

ATTEST:

(SEAL)

Sandra E. Kennedy
CITY CLERK

Ray A. Ebert
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of October, 1983, at the hour of 11:30 o'clock A. M., E.S.T.

Sandra E. Kennedy
CITY CLERK

Approved and signed by me this 18th day of October, 1983, at the hour of 3 o'clock P. M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

CONTRACT

This Agreement, made and entered into this 7th day of September, 1983

by and between O'ROURKE CONSTRUCTION COMPANY
4333 Mayhew, Cincinnati, Ohio 45238

hereinafter called "Contractor" and the City of Fort Wayne, Indiana, a municipal corporation, hereinafter called "City," under and by virtue of an act of the General Assembly of the State of Indiana, entitled "An Act Concerning Municipal Corporations," approved March 6, 1905, and all amendatory and supplementary acts thereto, WITNESSETH: That the Contractor covenants and agrees to improve by removal of the abandoned Penn-Central Railway Co. Railroad Bridges on Lafayette Street between Brackenridge and Murray Streets.

by grading and paving the roadway to a width of feet with

upon a foundation and with curbing as fully set out in the specifications hereinafter referred to, in a good and workmanlike manner and to the entire satisfaction of said City, in accordance with Improvement Resolution No. 5974-83 attached hereto and by reference made a part hereof.

At the following prices:

Removal of Railroad Piers & Superstructures & Incidental Repairs

Eighty-seven thousand, seven hundred dollars and no cents per lump sum

87,700.00

Total

Eighty-seven thousand, seven hundred dollars and no cents per lump sum

\$87,700.00

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana that he has complied with Sections 5, 68, 69 of the Workmen's Compensation Act, approved March 14, 1929, in accordance with Section 14 of the Compensation Act (Acts 1929, page 545, being I.C. 22-3-2-1 et. seq.).

A copy of General Ordinance No. G-34-78 (as amended) concerning discriminating in employment under municipal contracts, is attached and incorporated herein by reference.

The Contractor hereby expressly agrees to perform all the work in the prosecution of the above described improvement according to the terms and conditions of Improvement Resolution No. 5974-83 the plans, profiles, specifications and the contractor's bid therefor on file in the office of the Department of Public Works of said City, which said resolution, profile, plans and specifications are made a part of this contract as fully and effectually as if copied herein at full length, (copies of which are attached hereto).

It is hereby agreed that no assignment of this contract shall be made without the written consent of the City; said Contractor hereby covenants and agrees that said improvement shall be finally *Thirty days after 9-1-83 (See Addendum No. 1 and Liquidated Damages Provision.) and in all respects completed on or before _____, 19____ and the Contractor agrees to pay and give to the City, as liquidated damages, the sum of \$25.00 for each and every day after said date _____, 19____ until said work is finally completed and ready for acceptance by the City. It being also understood that in event of any conflict between this contract and the specifications, that the former shall be considered to contain the intention of the parties hereto.

It is further agreed by and between said parties, that the acceptance of the work provided for in this contract, or the payment therefor, for the whole or a part, shall not constitute a waiver on the part of the City of any of the provisions of the contract, nor shall it release said Contractor, or the sureties upon its bond for the faithful performance thereof, nor shall the acceptance be even prima facie evidence of the performance of any provisions of such contract except to the extent of entitling said Contractor to receive the price therefor. It is further understood that the failure of the City to exercise its right of inspection or rejection of material and work, or the exercise of such right shall not in any sense be considered an acceptance of any part of said work or material.

The Contractor further contracts and agrees that in the prosecution of said work all proper skill and care will be exercised, that said party will properly and fully guard all excavations and dangerous places, and will use all due and proper precautions to prevent injury to any property, person and persons, what or whomsoever. That for and during the period of the making of such improvement, and the period for which the same is to be maintained and kept in repair by the Contractor, the City shall be saved harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said Contractor, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage.

To each of the conditions and stipulations in this contract, the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, we the foregoing named parties hereunto set our hands this 9th day of September, 1983

ATTEST:

Sharon A. O'Rourke
Corporate Secretary

O'ROURKE CONSTRUCTION COMPANY

BY:

Patrick H. O'Rourke

ITS:

President
Contractor, Party of the First Part.

City of Fort Wayne, By and Through:

ATTEST:

Debra V. Gochenauer
Secretary and Clerk

Jack Wilson Sr.
Its Board of Public Works and Mayor.

BILL NO. G-78-10-41 (as amended)

GENERAL ORDINANCE NO. G-34-78 (as amended)

AN ORDINANCE amending Chapter 15 of the Code of the City of Fort Wayne, Indiana of 1974.

BE IT ENACTED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That Section 15-13 "Employment under Municipal Contract," Article III, Chapter 15 of the Code of the City of Fort Wayne, Indiana of 1974 is amended to be and read as follows, to wit:

"Sec. 15-13 Same - Under Municipal Contract.

15-13-1 Definitions. As used in this Section, the following words have these meanings:

- a. The terms "Discriminates," "discriminating," "discriminatory" mean and include:
 - (1) to promote segregation or separation in any manner, to treat any person differently, or to exclude from or fail or refuse to extend to any person equal opportunities with respect to hiring, termination, compensation, or other terms, conditions or privileges of employment, because of the race, religion, sex, color, national origin or handicap of any such person;
 - (2) also, to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped employee;
 - (3) also, to fail to make reasonable accommodation to the religious observance or practice of any employee or prospective employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the conduct of the employer's business;
 - (4) also, to make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement with respect to employment that indicates a preference, limitation, specification or discrimination based on race, sex, religion, color, national origin or handicap;
 - (5) the following practices are not included in the meaning of "discrimination":
 - (a) for any not-for-profit association, incorporated or otherwise, organized exclusively for fraternal or religious purposes, to devote its resources to its own religion or denomination, or to give employment preference to its own members,

- (b) for any not-for-profit association, incorporated or otherwise, established for the purpose of offering or providing education, training or other social services and benefits to handicapped persons, to devote its resources to such handicapped persons with respect to such education, training or social services and benefits.

b. The term "handicap" means and includes:

- (1) any physical or mental impairment which substantially limits one or more of a person's major life activities; or
- (2) a record of such an impairment, and includes,
- (3) a person who is regarded as having such an impairment; provided that,
- (4) this term does not include drug or alcohol abuse or addiction.

c. The term "obstruct" means and includes the actions of any person knowingly obstructing the fair and lawful enforcement of this Article of this Chapter by coercing or intimidating any complainant or prospective complainant, or any witness to any act of discrimination as defined herein, after such person has received actual notice of a discrimination charge or has been served notice of a complaint filed.

d. The term "retaliate" means and includes the actions of any person in discriminating against any other person with regard to, or denying any other person access to or opportunities in employment, because any such other person has opposed any practice made unlawful by this Article of this Chapter, or because such other person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this Article of this Chapter.

15-13-2 Mandatory Covenants. Every contract for or on behalf of the City of Fort Wayne for the construction, alteration or repair of any public building or public work or the performance of any other work or service shall contain provisions by which the contractor agrees, as follows:

- a. That in the performance of work under such contract or any subcontract thereunder, the contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, will not discriminate against any person who is qualified and available to perform the work to which the employment relates.
- b. That such contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor will not obstruct the enforcement of this Article of this Chapter.
- c. That such contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor will not retaliate against any person.

15-13-3 Enforcement. Enforcement of this Article of this Chapter shall be through order of the Board of Public Works, in the following manner:

- a. Whenever any member of the Board of Public Works, or whenever the Affirmative Action Officer who is assigned to help watch over public contracts has reason to believe that any of the provisions hereof have been violated, the matter may be referred to the Metropolitan Human Relations Commission for investigation and initiation of discrimination charges against the contractor or subcontractor. Cases over which the Commission has no jurisdiction shall be investigated by said Affirmative Action Officer.
- b. A final order of the Metropolitan Human Relations Commission shall be forwarded to the Board of Public Works, which may invoke one of the remedies set forth in Sub Section 15-13-4 hereof. If it is a matter over which the Metropolitan Human Relations Commission has no jurisdiction, the Board of Public Works shall conduct a hearing to determine whether there has been a breach of this Article of this Chapter. In so doing, the Board may call upon the Commission for consultation.

15-13-4 Remedies. Upon finding that a contractor or sub-contractor or any person acting on behalf of such contractor or subcontractor has violated a provision or provisions of this Article of this Chapter, whether discriminating, obstructing, retaliating, or otherwise, the Board of Works may:

- a. Deduct from the amount payable to the contractor by the City of Fort Wayne under such contract a penalty of no less than ten dollars (\$10.00) per day, per violation, nor more than one thousand dollars (\$1,000.00) per day, per violation. Each day on which a continuing violation exists, shall be deemed a separate offense; or,
- b. The Board of Works may cancel or terminate the contract, and all money due or to become due thereunder may be forfeited, for a second or any subsequent violation of this article of this Chapter.

SECTION 2. That Chapter 15, Article III, of the Code of the City of Fort Wayne, Indiana of 1974 is further amended by adding thereto a new section 15-13A, which shall be and read as follows, to wit:

"Sec. 15-13A. A verbatim copy of Sec. 15-13 may be attached as an exhibit to and incorporated in and made a part of any contract made by or on behalf of the City of Fort Wayne, Indiana for any public work; which shall constitute compliance with Sec. 15-13-2."

KNOW ALL MEN BY THESE PRESENTS, that we O'ROURKE CONSTRUCTION COMPANY
as Principal, and the United States Fidelity and Guaranty Company
_____, a corporation organized under the laws of the
State of Maryland, and duly authorized to transact business in the
State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne,
Indiana, an Indiana Municipal Corporation in the sum of EIGHTY-SEVEN THOUSAND,
SEVEN HUNDRED DOLLARS AND NO CENTS _____
(\$ 87,700.00 _____), for the payment whereof well and truly to be made,
the Principal and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents. The
condition of the above obligation is such that

WHEREAS, the Principal did on the 7th day of September, 1983,
enter into a contract with the City of Fort Wayne to construct

Improvement Resolution No. 5974-83

To improve by removal of the abandoned Penn-Central Railway Co. Railroad Bridges on
Lafayette Street between Brackenridge and Murray Streets.

at a cost of \$ 87,700.00 _____, according to certain plans and specifications
prepared by or approved by the City.

WHEREAS, the grant of authority by City to so construct such improvement
provides:

1. That said improvement shall be completed according to said plans and
specifications, and contractor shall warrant and guarantee all work, mater-
ial, and conditions of the improvement for a period of three (3) years from
the date of final acceptance in writing by the Owner;
2. There shall be filed with the City, within thirty (30) days after comple-
tion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifica-
tions, and repairs as required by the City within thirty (30) days after
notice.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

NOW THEREFORE, if the principal shall faithfully perform all of the terms and conditions required of it by the contract and shall for three (3) years after acceptance of said improvement by City warrant and guarantee said improvement and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

O'ROURKE CONSTRUCTION COMPANY
(Contractor)

BY:

Patrick H. O'Rourke

ITS:

President

ATTEST:

Sharon A. O'Rourke

Secretary

(Title)

United States Fidelity & Guaranty Co
Surety

*BY:

Debra Curre
Authorized Agent
(Attorney-in-Fact)

*If signed by an agent, power of attorney must be attached

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

----- O'ROURKE CONSTRUCTION COMPANY -----

(Name of Contractor)

----- 4333 Mayhew, Cincinnati, Ohio 45238 -----

(Address)

at Ohio, hereinafter called Principal,
(Corporation, Partnership or Individual)

and United States Fidelity and Guaranty Company
(Name of Surety)

and duly authorized to transact business in the State of Indiana, hereinafter called Surety, are held and firmly bound unto the City of Fort Wayne, an Indiana Municipal Corporation in the penal sum of EIGHTY-SEVEN THOUSAND, SEVEN HUNDRED DOLLARS AND NO CENTS -----

for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the 7th day of September, 19 83, for the construction of:

Improvement Resolution No. 5974-83

To improve by removal of the abandoned Penn-Central Railway Co. Railroad Bridges on Lafayette Street between Brackenridge and Murray Streets.

at a cost of EIGHTY-SEVEN THOUSAND, SEVEN HUNDRED DOLLARS AND NO CENTS -----
(\$87,700.00-----), all according to Fort Wayne Street Engineering Department plans and specifications.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subconstructor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed in three (3) counter-
(number)
parts, each one of which shall be deemed an original, this 7th day of
September, 19 83.

(SEAL)

ATTEST:

Sharon A. O'Rourke
(Principal) Secretary

Reginald Pope-Vale
Witness as to Principal

4333 Mayhew
(Address)

Cinti., Ohio 45238

Tina L. Spolas
Witness as to Surety

4333 Mayhew
(Address)

Cincinnati, Ohio 45238

O'ROURKE CONSTRUCTION COMPANY
Principal
BY Patrick H. O'Rourke
President
(Title)

4333 Mayhew, Cincinnati, Ohio 45238
(Address)

United States Fidelity & Guaranty Co
Surety
BY Helma Cuzey
Attorney-in-Fact
(Authorized Agent)

2436 Central Parkway
Cincinnati, Ohio 45214
(Address)

NOTE: Date of Bond must not be prior to date of Contract.
If Contractor is Partnership, all partners should execute bond.

BILL NO. S-83-09-52

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON Public Works TO WHOM WAS REFERRED AN
ORDINANCE approving a Contract by the City of Fort Wayne by and
through its Board of Public Works and O'Rourke Construction, for Res.
#5974-83, Lafayette Street Overpass Demolition

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

SAMUEL J. TALARICO, CHAIRMAN

VICTURE L. SCRUGGS, VICE CHAIRMAN

MARK E. GIAQUINTA

PAUL M. BURNS

ROY J. SCHOMBURG

Samuel J. Talarico

Victoria L. Scruggs

Mark E. Giaquinta

Paul M. Burns

Roy J. Schomburg

Cm. cured 10-11-83

Sandra E. Kennedy

TITLE OF ORDINANCE Contract for Res. 5974-83, Res. 5974-83, Lafayette Street Overpass

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

Demolition

SYNOPSIS OF ORDINANCE This contract is for improvement by removal of the abandoned

Penn-Central Railway Company Railroad Bridges on Lafayette Street between Brackenridge
and Murray Streets. Contractor is O'Rourke Construction, Contractor.

PRIOR APPROVAL RECEIVED 9/20/83

EFFECT OF PASSAGE Removal of abandoned RR Bridges on Lafayette Street

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$87,700.00

ASSIGNED TO COMMITTEE